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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91178539
Party	Defendant Omnisource DDS, LLC
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Date	06/30/2009
Attachments	AQUAJETT - Supplement Notice of Reliance 2 and 8.pdf ( 10 pages )(61563 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

SmithKline Beecham Corporation  
Opposer,

v.

Omnisource DDS, LLC,  
Applicant.

Opposition No. 91178539

Application Serial No. 78893144

Mark:

**AQUAJETT**

**APPLICANT'S SUPPLEMENTAL NOTICE OF RELIANCE EXHIBITS 2 AND 8**

Pursuant to the Board's order of June 10, 2009, Applicant submits Supplemental Exhibits 2 and 8 to Applicant's Notice of Reliance. The Board order directs Applicant to resubmit the relevant portions of the deposition in Exhibit 2 "with a complete explanation of the need for these portions" (Doc. 38 at 7), and to submit an explanation of the necessity of the discovery responses submitted in Exhibit 8 of Applicant's Notice of Reliance (Doc. 38 at 6). Applicant submits the following supplement to its notice of reliance and requests the Board accept and consider the following testimonial evidence.

**Exhibit 2**

Pages 22-24, 29-32, 36 -39, 41-42, 45-46, 51-52, and 58-59 from the February 27, 2008, Deposition Transcript of William R. Weissman, President of Applicant Omnisource DDS, LLC<sup>1</sup>. These pages are proper pursuant to TBMP § 704.10 because Opposer cited sections of the deposition in its Fifth Notice of Reliance, and are necessary and relevant as detailed below

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<sup>1</sup> Note that because the entire deposition transcript was previously submitted and the Board and parties are in possession of all of the pages cited herein, Applicant has not re-attached the pages here in an effort to reduce paper waste. However, Applicant will resubmit these pages if the Board so desires.

regarding Applicant's bona fide intent to use its mark in commerce along with numerous DuPont factors.

Specifically, the excerpts are relevant to make not misleading the portions Opposer has submitted. Opposer submitted the following excerpts in its Notice of Reliance:

- Pages 22 – 24, 39, 51: Dr. Weissman's description of Applicant's product, its market, and its functions, potential consumers, along with possible brand names, provide evidence regarding Applicant's bona fide intent to use the mark which is necessary to contradict Opposer's attempts to show a lack of bona fide intent, including Opposer's excerpts of the same deposition in Opposer's Fifth Notice of Reliance regarding Applicant's lack of sales, lack of manufacturing schematics or agreements, lack of marketing materials, and the like, and Opposer's First Interrogatory No. 10 ("State all facts and identify all documents supporting Applicant's assertion... that it had... a bona fide intention to use Applicant's Mark in commerce in connection with the goods identified in the application.") and response thereto included in Opposer's Sixth Notice of Reliance at Exhibit B.
- Pages 29-33, 45-46, 58-59: Dr. Weissman's description of Applicant's principle's patents and possible licensing of the products, including sending letters to potential licensees. This testimony is evidence of Applicant's bona fide intent to use its mark and necessary to contradict Opposer's attempts to show a lack of bona fide intent, including Opposer's excerpts of the same deposition in Opposer's Fifth Notice of Reliance regarding Applicant's lack of sales, lack of manufacturing schematics or agreements, lack of marketing materials, and the like, along with Opposer's First Interrogatory No. 10 ("State all facts and identify all documents supporting

Applicant's assertion... that it had... a bona fide intention to use Applicant's Mark in commerce in connection with the goods identified in the application.") and response thereto included in Opposer's Sixth Notice of Reliance at Exhibit B..

- Pages 36-39: Dr. Weissman's description of possible sales channels evidences Applicant's bona fide intent to use the mark which is necessary to contradict Opposer's attempts to show a lack of bona fide intent, including Opposer's excerpts of the same deposition in Opposer's Fifth Notice of Reliance regarding Applicant's lack of sales, lack of manufacturing schematics or agreements, lack of marketing materials, and the like, along with Opposer's First Interrogatory No. 10 ("State all facts and identify all documents supporting Applicant's assertion... that it had... a bona fide intention to use Applicant's Mark in commerce in connection with the goods identified in the application.") and response thereto included in Opposer's Sixth Notice of Reliance at Exhibit B..
- Pages 41-42: Dr. Weissman's description of trade show attendance evidences Applicant's bona fide intent to use the mark which is necessary to contradict Opposer's attempts to show a lack of bona fide intent, including Opposer's excerpts of the same deposition in Opposer's Fifth Notice of Reliance regarding Applicant's lack of sales, lack of manufacturing schematics or agreements, lack of marketing materials, and the like, along with Opposer's First Interrogatory No. 10 ("State all facts and identify all documents supporting Applicant's assertion... that it had... a bona fide intention to use Applicant's Mark in commerce in connection with the goods identified in the application.") and response thereto included in Opposer's Sixth Notice of Reliance at Exhibit B..

- Pages 51-52: Minutes from meetings of Applicant's partners are evidence of Applicant's bona fide intent to use the mark which is necessary to contradict Opposer's attempts to show a lack of bona fide intent, including Opposer's excerpts of the same deposition in Opposer's Fifth Notice of Reliance regarding Applicant's lack of sales, lack of manufacturing schematics or agreements, lack of marketing materials, and the like, along with Opposer's First Interrogatory No. 10 ("State all facts and identify all documents supporting Applicant's assertion... that it had... a bona fide intention to use Applicant's Mark in commerce in connection with the goods identified in the application.") and response thereto included in Opposer's Sixth Notice of Reliance at Exhibit B..

### **Exhibit 8**

Pursuant to TBMP § 704.10 and 37 CFR 2.120(j), the following discovery responses of Applicant are submitted and are necessary as explained below:<sup>2</sup>

- Opposer's First Set of Interrogatories to Applicant: Interrogatory No. 7 and Applicant's response thereto. Pursuant to TBMP § 704.10 and 37 CFR 2.120(j), Applicant needs to rely upon each of these so as not to make misleading the interrogatory and admission responses offered by Opposer in its Sixth Notice of Reliance regarding Applicant's bona fide intent to use its mark. Specifically, Applicant's response to Interrogatory No. 7 concerns the search of USPTO records performed by Applicant prior to its application filing. Applicant's search for conflicts is relevant as to Applicant's intent to select and use a unique mark and necessary to provide additional background regarding the statements in Applicant's response to

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<sup>2</sup> The discovery responses have previously been submitted as an exhibit to Applicant's original Notice of Reliance. In an effort to reduce paper waste, Applicant does not re-attach the exhibit here but merely to explain the necessity of the additional discovery responses pursuant to the Board's order of June 10, 2008.

Interrogatory No. 8, including in Opposer's Sixth Notice of Reliance, regarding Applicant's knowledge of Opposer's mark, and Opposer's Fifth Notice of Reliance regarding Applicant's lack of sales, lack of manufacturing schematics or agreements, lack of marketing materials, and the like.

- Opposer's Second Set of Interrogatories: Interrogatory Nos. 1, 2, 4, 6, 7, 8, 9, and 10 and Applicant's responses thereto. Pursuant to TBMP § 704.10 and 37 CFR 2.120(j), Applicant needs to rely upon each of these responses so as not to make misleading the interrogatory and admission responses offered by Opposer in its Sixth Notice of Reliance regarding Applicant's bona fide intent to use its mark. Specifically, each of these responses to Opposer's Second Set of Interrogatories is relevant as follows:
  - Response to 2nd Interrogatory No. 1: [Included in Opposer's Sixth Notice of Reliance and therefore moot here.]
  - Response to 2nd Interrogatory No. 2: Applicant's response regarding the differences in letters, sound, and appearance of the marks is necessary to contradict the allegations of similarity between the marks made by Opposer in its testimony, including Interrogatory No. 1 of Opposer's Second Set of Interrogatories in Opposer's Sixth Notice of Reliance ("identify the meaning of Applicant's AQUAJETT Mark, and explain how it differs from the meaning of Opposer's AQUAFRESH Mark").
  - Response to 2nd Interrogatory No. 4: Applicant's response regarding the differences in commercial impression is necessary to contradict the allegations of similarity between the marks made by Opposer in its testimony, including Interrogatory No. 3 of Opposer's Second Set of Interrogatories in Opposer's

Sixth Notice of Reliance (“identify the commercial impression of Applicant’s AQUAJETT Mark, and explain how it differs from Opposer’s AQUAFRESH Mark”).

- Response to 2nd Interrogatory No.6: Applicant’s response regarding the differences in the goods of the parties is necessary to contradict the allegations of similarity between the goods made by Opposer in its testimony, including Interrogatory No. 7 of Opposer’s Second Set of Interrogatories in Opposer’s Sixth Notice of Reliance (“identify each product Applicant intends to offer, sell, or distribute....using Applicant’s AQUAJETT Mark.”).
- Response to 2nd Interrogatory No. 7: [Included in Opposer’s Sixth Notice of Reliance and therefore moot here.]
- Response to 2nd Interrogatory No. 8: Applicant’s response regarding the nature of its goods intended to offer under the OMNIJET mark is necessary to contradict the allegations of similarity between the goods made by Opposer in its testimony, including Interrogatory No. 7 of Opposer’s Second Set of Interrogatories in Opposer’s Sixth Notice of Reliance (“identify each product Applicant intends to offer, sell, or distribute....using Applicant’s AQUAJETT Mark.”).
- Response to 2nd Interrogatory No. 9: Applicant’s response regarding the nature of its goods intended to offer under the OMNIPIK mark is necessary to contradict the allegations of similarity between the goods made by Opposer in its testimony, including Interrogatory No. 7 of Opposer’s Second Set of Interrogatories in Opposer’s Sixth Notice of Reliance (“identify each product

Applicant intends to offer, sell, or distribute....using Applicant's AQUAJETT Mark.").

- Response to 2nd Interrogatory No. 10: Applicant's response regarding the nature of its goods intended to offer under the AQUAPIK mark is necessary to contradict the allegations of similarity between the goods made by Opposer in its testimony, including Interrogatory No. 7 of Opposer's Second Set of Interrogatories in Opposer's Sixth Notice of Reliance ("identify each product Applicant intends to offer, sell, or distribute....using Applicant's AQUAJETT Mark.").
- Opposer's Requests for Admissions: Request Nos. 110, 112, 114, 116, and 174, and Applicant's responses thereto. Pursuant to TBMP § 704.10 and 37 CFR 2.120(j), Applicant needs to rely upon each of these so as not to make misleading the interrogatory and admission responses offered by Opposer in its Seventh Notice of Reliance regarding Applicant's bona fide intent to use its mark. Specifically, each of these responses to Opposer's Requests for Admissions is relevant as follows:
  - Request No. 110: Applicant's response its intention to use the OMNIJET mark is necessary to contradict the notices of abandonment included in Opposer's Eighth Notice of Reliance and Opposer's allegations regarding Applicant's lack of bona fide intent to use its mark such as Opposer's First Interrogatory No. 10 ("State all facts and identify all documents supporting Applicant's assertion... that it had... a bona fide intention to use Applicant's Mark in commerce in connection with the goods identified in the application.") included in Opposer's Sixth Notice of Reliance at Exhibit B.



- Request No. 112: Applicant's response its intention to use the OMNIPK mark is necessary to contradict the notice of opposition included in Opposer's Eighth Notice of Reliance and Opposer's allegations regarding Applicant's lack of bona fide intent to use its marks, as wells as Opposer's First Interrogatory No. 10 ("State all facts and identify all documents supporting Applicant's assertion... that it had... a bona fide intention to use Applicant's Mark in commerce in connection with the goods identified in the application.") and response thereto included in Opposer's Sixth Notice of Reliance at Exhibit B..
- Request No. 114: Applicant's response its intention to use the AQUAPIK mark is necessary to contradict the notices of abandonment included in Opposer's Eighth Notice of Reliance and Opposer's allegations regarding Applicant's lack of bona fide intent to use its mark such as Opposer's First Interrogatory No. 10 ("State all facts and identify all documents supporting Applicant's assertion... that it had... a bona fide intention to use Applicant's Mark in commerce in connection with the goods identified in the application.") and response thereto included in Opposer's Sixth Notice of Reliance at Exhibit B.
- Request No. 116: Applicant's response its intention to use the SHOWERJET mark is necessary to contradict the notices of abandonment included in Opposer's Eighth Notice of Reliance and Opposer's allegations regarding Applicant's lack of bona fide intent to use its mark such as Opposer's First Interrogatory No. 10 ("State all facts and identify all documents supporting

Applicant's assertion... that it had... a bona fide intention to use Applicant's Mark in commerce in connection with the goods identified in the application.") and response thereto included in Opposer's Sixth Notice of Reliance at Exhibit B.

- Request No. 174: Applicant's response regarding the exhibit, and the documents contain in the exhibit, are necessary to contradict Opposer's allegations regarding Applicant's lack of bona fide intent to use its mark such as Opposer's First Interrogatory No. 10 ("State all facts and identify all documents supporting Applicant's assertion... that it had... a bona fide intention to use Applicant's Mark in commerce in connection with the goods identified in the application.") and response thereto included in Opposer's Sixth Notice of Reliance at Exhibit B.

Dated this 30th day of June, 2009.



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**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of APPLICANT'S SUPPLEMENTAL NOTICE OF RELIANCE EXHIBITS 2 AND 8 has been served on the following by delivering said copy on June 30, 2009, via First Class Mail, postage prepaid, to counsel for Opposer at the following address:

Glenn A. Gundersen  
Dechert LLP  
Cira Centre, 2929 Arch Street  
Philadelphia, PA 19103-2808

By:  \_\_\_\_\_  
Erik M. Pelton, Esq.